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Revisor of Statutes
Bureau

ORDER of the Wisconsin Lottery Board creating LOT 8, relating to sales of break-open tickets by nonprofit organizations under temporary contracts at higher rates of compensation.

Analysis by the Wisconsin Lottery:

Statutory authority: s. 565.02 (3)(b) and (d), (4)(a), (b) and (f),
Stats.
Statutes interpreted: s. 565.10 (7)(a) and (14), Stats.

Wisconsin lottery retailer compensation is set by statute at 5% of the retail price of lottery tickets. However, the lottery board is authorized by s. 565.02 (4)(f), Stats., to provide by rule a higher rate of compensation to nonprofit organizations for sales under a contract issued on a temporary basis. The emergency rule establishes the procedures and criteria for nonprofit organization temporary retailer contracts and certificates of authority, including the application procedure, criteria for issuance of a nonprofit organization retailer temporary contract and certificate of authority, limitations on the number of events at which nonprofit organization retailers may sell lottery tickets under a temporary retailer contract and certificate of authority, a specification of the terms of a nonprofit organization retailer contract, and contract suspension and termination grounds and procedures. The emergency rule also prescribes a rate of compensation for nonprofit organization retailers under a temporary contract that is higher than the rate set by law for lottery retailers in general.

Text of the rule:

SECTION 1. Chapter LOT 8 is created to read:

CHAPTER LOT 8

NONPROFIT ORGANIZATION RETAILERS

LOT 8.01 PURPOSE. The purpose of this chapter is to provide the executive director with the procedures and criteria for contracting with nonprofit organizations to sell break-open lottery tickets for a higher rate of compensation, to establish the nonprofit organization retailer's duties and obligations under the contract, to provide the executive director with the procedures and criteria to terminate or suspend the retailer's contract, and to provide the applicant and nonprofit organization retailer an appeal procedure if a contract is denied or a contract is terminated or suspended.

addition, one special event during the organization's Wisconsin lottery contract year; or, in the alternative,

(b) Not more than 2 special events during the organization's Wisconsin lottery contract year.

(3) If the certificate is lost, mutilated or destroyed, the nonprofit organization retailer shall within 15 calendar days request in writing and submit a completed application for a duplicate certificate. The retailer shall pay \$10.00 by check to the Wisconsin lottery for a duplicate certificate of authority.

(4) A mutilated certificate shall be surrendered to the executive director upon issuance of a duplicate. A lost certificate, when found, shall be surrendered to the executive director within 15 calendar days of its recovery.

(5) If an organization wishes to sell Wisconsin lottery break-open tickets at an event not specified in its retailer contract, it shall apply to the Wisconsin lottery for an amendment to its retailer contract and to its certificate of authority and pay a fee of \$10.00. The application for an amendment and a check for \$10.00 must be received by the Wisconsin lottery at least 15 days before the subject event.

LOT 8.05 CONTRACT DENIAL PROCEDURE. The procedures prescribed under s. LOT 5.07 shall apply to contract denials under this chapter.

LOT 8.06 NONPROFIT ORGANIZATION RETAILER CONTRACT TERMS AND CONDITIONS. The nonprofit organization retailer contract under this chapter shall include all of the following terms and conditions:

(1) CONTRACT PERIOD AND SALES AUTHORIZATION. The contract shall remain in effect for at least one year and shall expire on the date shown on the Certificate of Authority. The retailer does not have a substantial interest in, or a vested or equitable right to a contract renewal.

(2) CONTRACT NOT ASSIGNABLE OR TRANSFERABLE. The contract may not be assigned or transferred from one organization or location to another.

(3) NONPROFIT ORGANIZATION RETAILER IS NOT AN EMPLOYEE OR AGENT OF THE STATE. The nonprofit organization retailer is not an employee or agent of the state of Wisconsin, and is not entitled to any right, privilege, or benefit which would accrue to an employee or agent of the state of Wisconsin.

(4) INDEMNIFICATION. The nonprofit organization retailer shall indemnify and hold harmless the state of Wisconsin, the Wisconsin lottery, and the Wisconsin lottery's employees and agents from and against all claims, suits, or action arising from any willful or negligent act or omission of the retailer or its agents while performing under the terms of the retailer contract.

(5) COMPLIANCE WITH STATE LAW AND RULES. During the term of the nonprofit organization retailer contract, the retailer shall comply with ch. 565, Stats., the lottery board's administrative rules, and any other applicable state law and administrative rules.

(6) CERTIFICATE OF AUTHORITY. The certificate of authority is not assignable and not transferable and must be conspicuously displayed at every event where there are sales authorized by the certificate.

(7) NOTIFICATION OF CHANGES IN THE NONPROFIT ORGANIZATION RETAILER'S APPLICATION.

(a) The nonprofit organization retailer shall in writing notify the executive director within 15 calendar days of every change of its organization structure, including but not limited to changes from unincorporated to incorporated status.

(b) The nonprofit organization retailer shall in writing notify the executive director at least 30 calendar days in advance of any change in the nonprofit organization retailer's official mailing address.

(c) The nonprofit organization retailer shall in writing notify the executive director within 15 calendar days if the retailer, or any of the retailer's officers or directors, as described under s. 565.10 (3), Stats., has been convicted of or pleaded guilty or no contest to a felony, a gambling related offense, or fraud or misrepresentation in any connection.

(8) SALE OF LOTTERY BREAK-OPEN TICKETS. The nonprofit organization retailer:

(a) Shall accept only cash for break-open lottery tickets.

(b) May not intentionally sell a break-open ticket to persons under 18 years of age.

(c) May not exchange break-open tickets with any other person or organization, including other lottery retailers.

(d) May not sell any break-open ticket at a price different than the price authorized by the lottery, condition the sale of a ticket upon the purchase of any other item or service, or impose any restriction upon the sale of a ticket unless specifically authorized by the executive director.

(e) May not play the lottery games by using any method other than random, fair chance, or by any method contrary to the principle that every ticket has an equal and random chance of winning.

(f) Shall explain the game rules to potential ticket customers when requested.

(g) Shall stamp each ticket with the retailer's identification number assigned by the lottery.

(9) SALES AT UNAUTHORIZED LOCATIONS, OR BEFORE COMMENCEMENT OR AFTER CONCLUSION OF EVENT. The nonprofit organization retailer may not sell any break-open tickets purchased from the lottery under this chapter before the commencement or after the conclusion of any event specified in its retailer contract and certificate of authority. The retailer may not sell tickets purchased from the lottery under this chapter at locations which are not specified in its contract and certificate of authority.

(10) RESPONSIBILITY FOR TICKETS. (a) The nonprofit organization retailer shall be responsible for the condition and security of lottery tickets received. If the retailer's lottery tickets are lost, stolen, mutilated, damaged, unaccountable or otherwise unsalable, the retailer shall be solely responsible for those tickets. The executive director may not reimburse the retailer for such losses.

(b) The nonprofit organization retailer shall report by telephone within 24 hours any stolen tickets to the director of security in Madison, Wisconsin.

(11) PAYMENT FOR BREAK-OPEN TICKETS. (a) The nonprofit organization retailer shall pay for tickets upon delivery; payment must be by check or money order; cash cannot be accepted.

(b) All tickets received by the nonprofit organization retailer shall be deemed to have been purchased by the retailer.

(c) Unsold tickets may not be returned for credit.

(d) The executive director may assess the retailer a \$20.00 surcharge for each dishonored check.

(12) PRIZE REDEMPTION. The nonprofit organization retailer shall redeem all prizes from break-open tickets purchased at the event on the day of sale and at the place of sale.

(13) RIGHT TO APPEAL SUSPENSION OR TERMINATION. In the event the executive director suspends or terminates the nonprofit organization retailer's contract, the retailer is entitled to an appeal in accord with the provisions in s. LOT 5.10.

(14) SUSPENSION OR TERMINATION PROCEDURE. The nonprofit organization retailer, upon notice of suspension or termination, shall immediately stop selling lottery tickets. Within 2 weeks of the suspension or termination, the retailer shall make payment on any money owed the Lottery and surrender all unsold tickets and all state owned lottery property.

(15) GROUNDS FOR SUSPENSION OR TERMINATION. The nonprofit organization retailer's contract may be suspended or terminated without prior notice by the lottery for any one of the following reasons:

(a) The retailer fails to meet any of the qualifications for being a retailer under s. 565.10, Stats., or under the lottery board's administrative rules.

(b) The retailer violates a provision of ch. 565, Stats., or of this chapter.

(c) The retailer sells break-open tickets at times or locations not authorized by the Certificate of Authority.

(d) The retailer intentionally sells a break-open ticket to a person under 18 years of age.

(e) The retailer endangers the security of the lottery.

(f) The retailer engages in fraud, deceit, misrepresentation, or other conduct prejudicial to public confidence in the lottery.

(g) The retailer fails to remit money owed to the lottery.

(h) The retailer engages in telecommunication or printed advertising that in the executive director's determination is false, deceptive or misleading; or

(i) The retailer fails to follow instructions and procedures for the conduct of any particular lottery game.

LOT 8.07 LIMITATION ON LENGTH OF SUSPENSION. A suspension shall be limited to a maximum of 45 calendar days, during which time the executive director shall consider the appropriate permanent action to be taken, including, but not limited to, termination of the nonprofit organization retailer contract.

LOT 8.08 PRIZE STRUCTURE OF NONPROFIT ORGANIZATION RETAILER BREAK-OPEN TICKET GAMES. The executive director shall offer nonprofit organization retailers under this chapter a selection of at least two break-open ticket games with prize structures ranging from not less than 50% to not more than 80% of sales.

LOT 8.09 TICKET COST TO NONPROFIT ORGANIZATION RETAILER AND NONPROFIT ORGANIZATION RETAILER COMPENSATION. The cost to the nonprofit organization retailer of break-open lottery tickets under this chapter shall be 10% of the face price of the tickets. The retailer shall be entitled to retain all proceeds from sales less redeemed prizes.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.

Dated: October 26, 1989 Agency: William F. Flynn, Jr.
William F. Flynn, Jr.
Executive Director